

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MARCHETA JAMES and MILDRED
SHAIFER,

Plaintiffs,

v.

GRAPETREE SHORES, INC. d/b/a
DIVI CARINA BAY RESORT,

Defendant

CIVIL NO. 2002/185

TO: Jeffrey B.C. Moorhead, Esq.

Francis J. D'Eramo, Esq./Rhonda Hospedales, Esq.

ORDER ON DEFENDANT'S MOTION IN OPPOSITION
OF POSTING OF SECURITY BOND BY PLAINTIFFS' COUNSEL

THIS MATTER came for consideration on Defendant's Motion in
Opposition of Posting of Security Bond by Plaintiffs' counsel.
No reply is required.

On December 20, 3002, Defendant served and filed Notices of
Demand for Security for Costs against Plaintiffs. On December
31, 2002, Plaintiffs' attorney filed a declaration stating that
he had liquid assets in excess of \$2,000.00 and that he would pay
any costs awarded against Plaintiffs exceeding \$2,000.00
(\$1,000.00 for each Plaintiff).

5 V.I.C. § 547(c)(1) allows the security required by
§ 547(a) to be provided..."by filing with the Clerk an
undertaking with sufficient sureties to the effect that they will
pay such costs as may be awarded against the Plaintiff by
Judgment or in the progress of the action, not exceeding the sum

of \$1,000.00..." (emphasis added). Presumably, the referenced "they" are the sureties, else why require such undertaking to have such sureties. The Court accepts Attorney Moorhead's declaration that he has sufficient liquid assets and that his commitment to pay the subject costs is unequivocal. Accordingly, the Court finds that Attorney Moorhead's undertaking provides substantial compliance with 5 V.I.C. § 547(c)(1).

Defendant argues that Attorney Moorhead's guarantee of such payments is prohibited by the ethical rules governing lawyers from personally guaranteeing the payment of any future award of costs [citing Restatement (Third): The Law Governing Lawyers § 36(2); and MRPC 1-8(e)]. "There is nothing in Attorney Moorhead's Declaration that ensures the Court that the Plaintiffs are the individuals who will be ultimately liable for the payments and/or advancement of such costs."

This Court has previously allowed such guarantees by attorneys. The sums guaranteed are *de minimus* in consideration of the likely other costs of litigation and as a practical matter costs are rarely awarded against Plaintiffs in cases such as this. In any event, the ethical considerations must be considered by Plaintiffs' attorney and may be addressed in some

other appropriate forum.¹

Upon consideration, it is hereby;

ORDERED as follows:

1. Defendant's motion is DENIED in so far as it contests the validity of Attorney Moorhead's undertaking in satisfaction of 5 V.I.C. § 547(c)(1).
2. Nothing herein shall be determinative of whether such undertaking is prohibited by any ethical consideration or rules. That issue may be raised in the appropriate forum.
3. Defendant shall file any responsive pleading by February 10, 2003.

ENTER:

Dated: January 28, 2003

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By: _____
Deputy Clerk

1. Minimally, Plaintiffs' attorney should discuss with Plaintiffs and amend his Declaration to clarify that Plaintiffs are ultimately liable for any costs advanced pursuant to such guarantee.